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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/859,565	05/16/2001	Jeffrey H. Alger	03797.00014	4100

28319 7590 01/17/2007 BANNER & WITCOFF LTD., ATTORNEYS FOR CLIENT NOS. 003797 & 013797 1001 G STREET , N.W. SUITE 1100 WASHINGTON, DC 20001-4597	**EXAMINER** VIG, NARESH

ART UNIT	PAPER NUMBER
3629	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

PTOL-90A (Rev. 10/06)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>02 November 2006</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 – 3, 5 – 12, 14 – 17, 19 – 22, 24 – 26, 28 and 30 – 42* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 – 3, 5 – 12, 14 – 17, 19 – 22, 24 – 26, 28 and 30 – 42* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

This is in reference to response Pre-Appeal Brief Decision mailed 02 November 2006. Office action is for amended pending claims filed 01 September 2005. Claims 1 – 3, 5 – 12, 14 – 17, 19 – 22, 24 – 26, 28 and 30 – 42 are pending for examination.

Response to Arguments

Applicant's arguments and concerns for amended claims have been responded in response to the pending claims in the application.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 33 – 35 are rejected under 35 U.S.C. 112, second paragraph, as being vague and indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant recites the limitation of forwarding said branded software application to a user. It is not clear whether the applicant is forwarding the received software with multiple brandings, or, forwarding the branded software in which access prevention is performed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 – 3, 5 – 12, 14 – 17, 19 – 22, 24 – 26, 28 and 30 – 42 are rejected

under 35 U.S.C. 103(a) as being unpatentable over 1stUP.com hereinafter known as

1stUP in view of News & Observer article "Gateway Gets Concession From Microsoft

On Startup Screen" hereinafter known as N&O and Washington Post article "Microsoft

Lets Dell Omit Some Internet Explorer Icons" hereinafter known as WashingtonPost.

Regarding claims 1 – 3, 26, 1stUP teaches computer program stored on a

computer medium, system and method, for distributing variations of electronic data

through multiple merchants to purchasers (users, subscribers, end users). 1stUP

teaches:

publishing a first variation of electronic data for a first merchant to make available

to purchase, the first variation having a core portion for retrieving and rendering content

and a first merchant-specific portion [1stUP, page 6, 10 – 11, 26 – 34];

publishing a second variation of the electronic data for a second merchant to

make available to purchasers, the second variation having the core portion and a

second merchant-specific portion [1stUP, page 6, 10 – 11, 26 – 34], and

such that the first merchant-specific portion differs from the second merchant-specific portion so that a purchaser's viewing or execution of the first variation evokes an association with the first merchant and a purchaser's viewing or execution of the second variation evokes an association with the second merchant.

1stUP does not specifically teach core portion to include browser application. However, N&O teaches idea of distribution of core portion including a browser portion.

Therefore it would have been obvious at the time of invention to one of ordinary skill in the art that one of ordinary skill in the art can modify teachings of 1stUP as taught by N&O and distribute core portion including browser function to distribute off the shelf package like Windows.

1stUP in view of N&O teaches:

the first merchant adds the first-merchant specific portion to the core portion to produce the first variation [1stUP, page 23]

the second merchant adds the second-merchant specific portion to the core portion to produce the second variation [1stUP, page 31].

1stUP in view of N&O does not specifically teach a publisher provides the core portion to the first merchant with both the first-merchant specific portion and the second-merchant specific portion (i.e. allowing merchant to customize the software). However, WashingtonPost teaches customization of core portion with Browser by allowing a merchant to delete portions of the publisher (Microsoft) supplied core portion including a browser.

Therefore it would have been obvious at the time of invention to one of ordinary

skill in the art that one of ordinary skill in the art to modify 1stUP in view of N&O as

taught by WashingtonPost to be reduce maintaining customer specific releases.

1stUP in view of N&O and WashingtonPost teaches idea of:

the first merchant enables or deletes at least a part of the second-merchant

specific portion (i.e. merchant is customizing the application provided by the publisher)

to produce the first variation (i.e. customized to produce merchant specific application),

Regarding claim 5, 1stUP in view of N&O and WashingtonPost teaches idea of

browser application rendering of content using the first variation evokes an association

with the first merchant [1stUP, page 28].

Regarding claim 6, 1stUP in view of N&O and WashingtonPost teaches core

portion is a commerce application for purchasing goods or services, such that the

purchase of goods or services using the first variation evokes an association with the

first merchant (e.g. link to WJLA) [1stUP, page 28].

Regarding claim 7, 1stUP in view of N&O and WashingtonPost teaches core

portion is a commerce application for purchasing goods or services from the first

merchant [1stUP, page 28].

Regarding claim 8, 1stUP in view of N&O and WashingtonPost teaches core portion is a commerce application for purchasing content [1stUP, page 28].

Regarding claim 9, 1stUP in view of N&O and WashingtonPost teaches first-merchant specific portion evokes an association with the first merchant by controlling an appearance of the browser during execution [1stUP, page 29, N&O].

Regarding claim 10, 1stUP in view of N&O and WashingtonPost teaches first-merchant specific portion evokes an association with the first merchant by providing a user interface for the browser during execution that displays at least one image associated with the first merchant [1stUP, page 28, N&O, WashingtonPost].

Regarding claim 11, 1stUP in view of N&O and WashingtonPost teaches first-merchant specific portion evokes an association with the first merchant by controlling one or more functions of the browser application during execution [1stUP, page 28, N&O, WashingtonPost].

Regarding claim 12, 1stUP in view of N&O and WashingtonPost teaches first-merchant specific portion evokes an association with the first merchant by providing added functionality to the browser application during execution, such that the added functionality relates to the first merchant [1stUP, page 28, N&O, WashingtonPost].

Regarding claim 14, 1stUP in view of N&O and WashingtonPost teaches first-merchant specific portion evokes an association with the first merchant by providing function controls in a user interface for the browser that facilitate the retrieval of content from only sites associated with the first merchant [1stUP, page 28, N&O, WashingtonPost].

Regarding claim 15, 1stUP in view of N&O and WashingtonPost teaches first-merchant specific portion evokes an association with the first merchant by providing function controls in a user interface for the browser that facilitate the retrieval of specific content associated with the first merchant [1stUP, page 28, N&O, WashingtonPost].

Regarding claim 16, 1stUP in view of N&O and WashingtonPost teaches first-merchant specific portion evokes an association with the first merchant by controlling an operation of the browser application during execution [1stUP, page 28, N&O, WashingtonPost].

Regarding claim 17, 1stUP in view of N&O and WashingtonPost teaches first-merchant specific portion evokes an association with the first merchant by limiting or expanding the operation of the browser application during execution [1stUP, page 28, 31 N&O, WashingtonPost].

Regarding claim 19, 1stUP in view of N&O and WashingtonPost teaches first-merchant specific portion evokes an association with the first merchant by limiting the operation of the browser to the retrieval of content from only sites associated with the first merchant [1stUP, page 28, N&O, WashingtonPost].

Regarding claim 20, 1stUP in view of N&O and WashingtonPost teaches first-merchant specific portion evokes an association with the first merchant by limiting the operation of the browser to the retrieval of specific content associated with the first merchant [1stUP, page 28, N&O, WashingtonPost].

Regarding claim 21, 1stUP in view of N&O and WashingtonPost teaches first-merchant specific portion evokes an association with the first merchant by limiting operation of the browser application so that the browser application may retrieve content from designated sites only when the browser application is executing at a physical location defined by the first merchant [1stUP, page 28, N&O, WashingtonPost].

Regarding claim 22, 1stUP in view of N&O and WashingtonPost teaches first-merchant specific portion evokes an association with the first merchant by facilitating cooperation between the browser application and another executable program associated with the first merchant [1stUP, page 28, N&O, WashingtonPost].

Regarding claim 24, it is inherent that 1stUP in view of N&O and WashingtonPost teaches when the first-merchant specific portion is integrated with the core portion such that the first merchant specific portion cannot be replaced by a portion specific to another merchant without damaging the first variation (i.e. any modification made to the core application changes the core application).

Regarding claim 25, it is inherent that 1stUP in view of N&O and WashingtonPost teaches when the first-merchant specific portion is integrated with the core portion such that the first merchant specific portion cannot be deleted from the first variation without damaging the first variation (i.e. any modification made to the core application changes the core application).

Regarding claim 28, it is inherent that 1stUP in view of N&O and WashingtonPost teaches when second data field contains branding information for a plurality of merchants, such that all of the branding information except for branding information relating to a single merchant must be deleted before a computer may properly perform the one or more functions (i.e. customization of the software for a business).

Regarding claims 30 – 32, as responded to earlier, 1stUP in view of N&O and WashingtonPost teaches selling of branded software by receiving a software application including a browser (i.e. getting core version of the application), branding said software application (customizing the application), forwarding said branded software application

to a user (delivering the customized version to a user) via internet [1stUP, page 2 – 34]

or a store (For example, Kmart providing access to their "www.bluelight.com"

(commercially available at the time of invention) in stores selling of $0.00 (free of

charge)).

Regarding claims 33 – 35, as responded to earlier and as best understood by

examiner, 1stUP in view of N&O and WashingtonPost teaches selling of branded

software by receiving a software application with multiple brandings including a browser

(i.e. getting core version of the application for the software vendor), preventing access

to at least one of the multiple brandings associated with said software application (i.e.

customization) forwarding said branded software application to a user (delivering the

customized version to a user) via internet [1stUP, page 2 – 34] or a store (For example,

Kmart providing access to their "www.bluelight.com" (commercially available at the time

of invention) in stores selling of $0.00 (free of charge)).

Regarding claims 36 – 38, as responded to earlier, 1stUP in view of N&O and

WashingtonPost teaches selling branded software by receiving a software application

including a browser (i.e. getting core version of the application for the software vendor),

adding multiple brandings to said software application (modifying / customizing the

software), forwarding said branded software application to a user (delivering the

customized version to a user) via internet [1stUP, page 2 – 34] or a store (For example,

Kmart providing access to their "www.bluelight.com" (commercially available at the time

of invention) in stores selling of $0.00 (free of charge)).

Regarding claims 39 – 42, as responded to earlier, 1stUP in view of N&O and

WashingtonPost teaches branding of software by receiving a software application

including a browser (i.e. getting core version of the application for the software vendor),

adding at least one branding to said software application (customizing the software). It

would have been obvious to one of ordinary skill in the art that adding step

(customization) can be performed by software application provider (e.g. Microsoft),

merchant (e.g. KMart), end user (Gateway Computer).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is required under 37 CRF '1.111 (c) to consider the references fully when responding to this office action.

1. Microsoft Will Let Gateway Customize PC Buyers Screens

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naresh Vig whose telephone number is (571) 272-6810. The examiner can normally be reached on M-F 7:30 - 6:00 (Wednesday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Naresh Vig
Examiner
Art Unit 3629

January 8, 2007